ATTORNEY FOR APPELLANT:

ROBERT J. HARDY
Thomas & Hardy
Auburn, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

KELLY A. MIKLOS
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

DENNIS W. SPRATT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 17A03-0804-CR-142
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEKALB SUPERIOR COURT
The Honorable Kevin P. Wallace, Judge
Cause No. 17D01-0502-FC-5

August 22, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Dennis Spratt appeals his sentence for forgery as a class C felony.[1] Spratt raises one issue, which we revise and restate as:

I. Whether the trial court abused its discretion in sentencing him; and

II. Whether Spratt's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. On February 12, 2005, Spratt obtained the credit card of Steve Smolek without authorization. Spratt went to the Country Hearth Inn in Auburn, used the credit card to pay for a room, and signed Smolek's name on the receipt. Spratt also used the credit card at a gas station in the same manner.

On February 18, 2005, the State charged Spratt with forgery as a class C felony and theft as a class D felony. On August 3, 2005, Spratt pled guilty to forgery as a class C felony, and the State dismissed the remaining charge. The State agreed to refrain from filing a habitual enhancement and also agreed to recommend that the "executed sentence will be capped at six (6) years." Appellant's Appendix at 25.

In August 2005, the trial court ordered Spratt released from jail on his own recognizance so that he could have gall bladder surgery and scheduled the sentencing hearing for September 2, 2005. Spratt failed to appear for the sentencing hearing. The trial court issued a warrant for Spratt's arrest. In February 2008, Spratt was arrested

[1] Ind. Code § 35-43-5-2 (2004) (subsequently amended by Pub. L. No. 45-2005, § 2 (eff. July 1, 2005), Pub. L. No. 106-2006, § 3 (eff. July 1, 2006)).

under the warrant. After a sentencing hearing, the trial court noted Spratt's criminal history and previous violations of probation and parole and sentenced Spratt to five years in the Indiana Department of Correction.

I.

The first issue is whether the trial court abused its discretion in sentencing Spratt.[2] Sentencing decisions rest within the discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Smallwood v. State, 773 N.E.2d 259, 263 (Ind. 2002). An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." Pierce v. State, 705 N.E.2d 173, 175 (Ind. 1998). In order for a trial court to impose an enhanced sentence under the sentencing scheme in effect at the time of the commission of the offense, it must: (1) identify the significant aggravating factors and mitigating factors; (2) relate the specific facts and reasons that the court found to support those aggravators and mitigators; and (3) demonstrate that the court has balanced the aggravators with the mitigators. Veal v. State, 784 N.E.2d 490, 494 (Ind. 2003). Spratt appears to argue that the trial court abused its discretion by: (A)

---

[2] Indiana's sentencing scheme was amended effective April 25, 2005, to incorporate advisory sentences rather than presumptive sentences. See Ind. Code §§ 35-38-1-7.1, 35-50-2-1.3. Spratt committed his offense prior to the effective date and was sentenced after April 25, 2005. We apply the version of the sentencing statutes in effect at the time Spratt committed his offense. See Gutermuth v. State, 868 N.E.2d 427, 431 n.4 (Ind. 2007) (noting that "[h]ad the new [sentencing] statute become effective between the date of [a defendant]'s crime and his sentencing, the version of the statute in effect at the time of [a defendant]'s crime would have applied"); see also Padgett v. State, 875 N.E.2d 310, 316 (Ind. Ct. App. 2007) (reviewing the defendant's sentencing under the presumptive sentencing scheme when defendant committed his crime before the effective date of the new sentencing scheme, but was sentenced after this date) trans. denied.

failing to find his guilty plea as a mitigator; and (B) failing to describe the reasons for the imposition of his sentence.

A. Guilty Plea

The trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor. Gross v. State, 769 N.E.2d 1136, 1140 (Ind. 2002). "Nor is the court required to give the same weight to proffered mitigating factors as the defendant does." Id. Further, the trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Sherwood v. State, 749 N.E.2d 36, 38 (Ind. 2001), reh'g denied. An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999).

The trial court did not specifically identify Spratt's guilty plea as a mitigating factor. The Indiana Supreme Court has recognized that a guilty plea is a significant mitigating circumstance in some circumstances. Trueblood v. State, 715 N.E.2d 1242, 1257 (Ind. 1999), reh'g denied, cert. denied, 531 U.S. 858, 121 S. Ct. 143 (2000). Where the State reaps a substantial benefit from the defendant's act of pleading guilty, the defendant deserves to have a substantial benefit returned. Sensback v. State, 720 N.E.2d 1160, 1164 (Ind. 1999). However, a guilty plea is not automatically a significant mitigating factor. Id. at 1165.

For example, in Sensback, the defendant argued that her guilty plea showed "acceptance of responsibility." Id. at 1164. However, the State argued that she received

her benefit due in that the State dropped the robbery and auto theft counts in exchange for her guilty plea to the felony murder charge. Id. at 1165. The Indiana Supreme Court agreed with the State that the defendant "received benefits for her plea adequate to permit the trial court to conclude that her plea did not constitute a significant mitigating factor." Id.

Here, Spratt received significant benefits from his guilty plea. In exchange for his guilty plea, the State dismissed the charge of theft as a class D felony, agreed to refrain from filing a habitual enhancement, and also agreed to recommend that the "executed sentence will be capped at six (6) years." Appellant's Appendix at 25. Thus, Spratt received a significant benefit from his guilty plea, and the trial court did not abuse its discretion by not identifying Spratt's guilty plea as a mitigating factor. See Sensback, 720 N.E.2d at 1164-1165.

B. Sentencing Statement

Spratt argues that the trial court failed to describe the reasons for the imposition of his sentence. At the sentencing hearing, the trial court stated:

> Well, as, as [the prosecutor] pointed out, this is in fact Mr. Spratt's third felony conviction. Uh, besides two previous felonies, he has five misdemeanor convictions. And if you count the one in Noble County after the plea but before today, the one he picked up while there was a warrant pending here, he actually has six misdemeanor convictions as of today. And apparently a warrant out of Noble County for failure to appear on probation violation. Uh, admittedly, at the time of this incident, uh, Mr. Spratt was actively using drugs and apparently stealing to get funds to use drugs. He had violated, on his previous forgery conviction he had violated probation and violated parole. And just a week before this incident left against, left the Washington House facility in Fort Wayne against staff

> advice. So he was pretty, pretty much hung up in a downward spiral it seems like. Given all those considerations, I think that the original sentence recommended by Mr. Davidson is appropriate. And I'm going to sentence [Spratt] to the Department of Correction for five years. I don't believe that probation, uh, would be appropriate or that Mr. Spratt would take advantage of it, quite frankly. So I'm going to order that the entire five years be served.

Transcript at 34-35. Based on the trial court's comments, we conclude that the trial court adequately explained its reasons for imposing the sentence. See, e.g., Brown v. State, 698 N.E.2d 779, 781 (Ind. 1998) (holding that the record demonstrated that the trial court considered the circumstances of the crime in ordering the sentences to be enhanced); Perry v. State, 845 N.E.2d 1093, 1096-1097 (Ind. Ct. App. 2006) (holding that the trial court's thought process was clear and adequate), trans. denied.

II.

The next issue is whether Spratt's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Spratt argues that his sentence should be reduced to four years.

Our review of the nature of the offense reveals that Spratt used a credit card that did not belong to him multiple times. Our review of the character of the offender reveals

that Spratt failed to appear for the sentencing hearing in September 2005. Spratt has prior convictions for two counts of driving while suspended as class A misdemeanors, criminal mischief as a class A misdemeanor, criminal deception as a class A misdemeanor, operating a vehicle while intoxicated as a class A misdemeanor, operating a vehicle while intoxicated having a previous conviction as a class D felony, and forgery as a class C felony. Spratt "has previously been on probation and has completed probation successfully and has, also, had his probation revoked or terminated due to unsatisfactory performance, including new arrests." Appellant's Appendix at 84-85.

After due consideration of the trial court's decision, we cannot say that the five-year sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Farris v. State, 787 N.E.2d 979, 985 (Ind. Ct. App. 2003) (holding that the defendant's eight-year sentence for forgery was not inappropriate).

For the foregoing reasons, we affirm Spratt's sentence for forgery as a class C felony.

Affirmed.

BAKER, C. J. and MATHIAS, J. concur